उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(108)

मामला क्रमांक Cr. Appeal No. 39/00 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.39/2000

APPELLANTS

1. Jadgish, S/o Sukchandra Satnami, aged about 35 years.
2. Jaddu, S/o Sukchandra Satnami, aged about 30 years.
3. Jagtu, S/o Sukchandra Satnami, aged about 27 years.

All the appellants are resident of Village Manarboi, P.S. Bemetra, District Durg (C' garh)

VS

RESPONDENT

State of Chhattisgarh, through P.S. Bemetra, District Durg.

Present:
Mr. V. C. Ottalwar, Advocate for the appellants.

Mr. U.N.S. Deo, Additional Public Prosecutor for the respondent-State.

ORAL JUDGMENT

(19th April, 2007)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentences dated 30th September, 2000 passed by the Additional

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Sessions Judge, Bemetra, District Durg in S.T. No.134/95 whereby learned Additional Sessions Judge after holding accused/appellant Jaddu guilty for commission of offence under Sections 302 & 323 of the IPC and accused Jagdish & Jagtu under Sections 302/34 & 323/34 of the IPC, sentenced each of them to undergo R.I. for life and to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for one year and R.I. for 6 months respectively.

The case of the prosecution, in brief, is that Jhunia Bai was having three daughters namely Phoolkeshari, Jhamanbai & Ganeshiya, out of them Ganeshiyabai had already died and Phoolkeshari was issueless. Four acres of land of Jhunia Bai was partitioned in equal share between Jhamanbai & Sukhchand, who was the husband of Ganeshiya Bai, sister of Jhamanbai. There was a dispute between them regarding the land and on the fateful day Jhamanbai cut the bush tree, whereupon accused Sukhchand (since deceased), Jagdish & Jagtu came with lathi and assaulted Hemchand (since deceased) as a result of which he fell down, thereafter accused Jaddu sat on the chest of Hemchand and pressed the neck with the hand as a result of which Hemchand died on account of asphyxia. Accused persons also attacked Jhamanbai as a result of which she received simple injuries. The matter was report by Sarpanch Naindas (PW-4) in the Police Station Bemetra whereupon First Information Report (Ex.P-14) was registered. During investigation accused Jagtu gave memorandum (Ex.P-1), accused Jaddu gave memorandum (Ex.P-3), accused Jagdish gave memorandum

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

(Ex.P-4) & accused Sukhchand gave memorandum (Ex.P-5) regarding the lathis and in pursuance of that lathis were recovered under Ex.P-6, Ex.P-7, Ex.P-8 & Ex.P-9 at their instance. Sari of injured Jhamanbai and one towel were seized under Ex.P-13. Inquest (Ex.P-19) on the body of Hemchand was prepared by the Investigating Officer after giving notice (Ex.P-18) to the panchas. Site plan (Ex.P-21) was prepared by the Patwari. Injuries of Jhamanbai were examined by Dr. N.K. Tiwari (PW-14), who prepared the injury report Ex.P-23. Merg intimation (Ex.P-26) was given by Sarpanch Naindas (PW-4) to the Station House Officer, Police Station Bemetra. Dead body was sent for postmortem under Ex.P-28 to Government Hospital, Bemetra where Dr. M.M. Deodhar (PW-21) conducted postmortem, prepared the report Ex.P-41 and opined that the cause of death is asphyxia due to strangulation.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Bemetra, who in turn committed the case to learned Sessions Judge, Durg from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellants examined twenty one witnesses. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime. Accused persons examined Ferha (DW-1), Kanwar Singh (DW-2), Durg (DW-3) & Jagdish

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(DW-4) as defence witnesses. However, during trial accused Sukchand expired.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused persons, as aforementioned.

We have heard Mr. V.C. Ottalwar, Advocate for the appellants and Mr. U.N.S. Deo, Additional Public Prosecutor for the respondent State.

Mr. Ottalwar has not disputed the homicidal death of Hemchand. Moreover, as per evidence of Jhamanbai (PW-2) & Sadhelal (PW-12), who witnessed the crime in question as also from the evidence of Dr. M.M. Deodhar (PW-21) who conducted the postmortem and opined that death of Hemchand was homicidal on account of asphyxia, it is established that the death of Hemchand was homicidal in nature.

As far as involvement of the accused/appellants in the crime in question is concerned, Mr. Ottalwar argued that as far as accused Jagdish & Jagtu are concerned there is no allegation against them that they were sharing common intention with Jaddu to cause death of Hemchand. He also argued that as per evidence of injured Jhamanbai (PW-2), who is the wife of deceased and witnessed the crime, in the first instance accused Sukhchand (since deceased), Jagdish & Jagtu attacked Hemchand with the lathi as a result of which he fell down and thereafter, accused Jaddu sat on the chest and pressed the neck. Therefore, from the above evidence it

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आदेश पत्रक (पूर्वानुबद्ध)

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cannot be inferred that Jagdish & Jagtu were sharing intention with Jaddu to cause death of Hemchand.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of the trial court.

In order to appreciate the arguments advanced by learned counsel for the respective parties, we have scrutinized the evidence of Jhamanbai (PW-2), who has stated that a bush tree standing on their land was cut by them, therefore, accused persons started quarrelling. Sukhchand, Jagdish & Jagtu came with lathi, attacked her husband as a result of which he fell down, thereafter, accused Jaddu sat on the chest of Hemchand and pressed his neck. She has further stated that these persons attacked her also with the lathi as a result of which she also sustained injuries. The above evidence has been corroborated by Sadhelal (PW-12), grandson of deceased & Jhamanbai. Dr. M.M. Deodhar (PW-21) has stated that on 19.10.1994 he conducted postmortem on the body of Hemchand and found that there was a bruise in the size of 11cmx1cm on the neck, there was a lacerated wound over parieto occipital region of scalp in the size of $5\frac{1}{2} \times 1$ cm, there was a injury in the size of 3cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm on occipital region, there was a injury in the occipital region on left scalp in the size of 1cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm. Subcutaneous tissues & muscles corresponding of neck below to bruises injuries were extravasations. Brain, throat, wind pipe, brain membrane, liver & kidney were congested. Right chamber of heart was full of blood and left was empty. Hyoid bone was fractured and in his opinion

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आदेश पत्रक (पूर्वानुबद्ध)

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cause of death was asphyxia as a result of strangulation and his report is Ex.P-41.

Therefore, if the evidence of Dr. M.M. Deodhar (PW-21) & Jhamanbai (PW-2) is read together, then it show that Hemchand died on account of strangulation, which was caused by accused Jaddu. As such, we are of the considered opinion that as far as the conviction of accused Jaddu under Section 302 of IPC is concerned, the same is based on legal clinching evidence and finding of the trial court to that extent does not require any interference by this Court.

So far as the accused Jagdish & Jagtu are concerned, as per evidence of Jhamanbai (PW-2) quarrel started on the ground that one bush tree was cut by Jhamanbai, whereupon, accused Sukchand, Jagdish & Jagtu came with lathi, assaulted her husband Hemchand, as a result of which he fell down and thereafter, accused Jaddu sat on his chest and pressed the neck. Therefore, on the facts it cannot be held that the accused Jagdish & Jagtu were sharing common intention with accused Jaddu to cause death of Hemchand and as such, their conviction under Section 302/34 of the IPC cannot be sustained. But these accused persons attacked Hemchand with lathi as a result of which he sustained simple injuries, therefore, they were liable to be convicted for commission of offence under Section 323 of IPC for causing simple injuries to Hemchand, accordingly they are convicted under Section 323 of the IPC.

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So far as conviction of accused Jagdish & Jagtu under Section 323/34 of IPC is concerned, the same is based on the evidence of injured witness Jhamanbai (PW-2) to whom also the accused persons have assaulted and also on the evidence of PW-12 Sadhelal who witnessed the crime in question and therefore, their conviction under Section 323/34 of IPC is based on legal clinching evidence which requires no interference by this Court. However, conviction of accused Jaddu under Section 323 cannot be sustained as there is no evidence to show that he was sharing common intention with other accused persons to cause simple injuries to Jhamanbai.

In the result, the appeal filed by accused Jagdish & Jagtu partly succeeds and their conviction under Section 302/34 of IPC and sentence imposed upon them under that section are hereby set aside and they are acquitted of the said charge. However, their conviction under Section 323/34 of IPC and sentence imposed upon them under that section are maintained. They are further convicted under Section 323 of IPC for causing simple injuries to Hemchand and sentenced to undergo R.I. for 1 year. It is stated that accused Jagdish & Jagtu remained in custody w.e.f. 26.10.1994 to 25.8.1995 and thereafter from judgment date i.e. from 30.9.2000 up to 23.6.2006 when they were directed to be released on bail. Therefore, in view of the fact that they have already undergone the sentence imposed upon them under Sections 323/34 & 323 of IPC, they need not to surrender and their bail bonds are discharged.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	As far as the appeal of accused Jaddu against the conviction and sentence under Section 302 of IPC is concerned, the same is dismissed. Sd/- L.C.BHADOO Judge Sd/- DHIRENDRA MISHRA Judge	

Roshan/-